

view the facts that at the date of the settlement he was domiciled in the province of Quebec, and that he subsequently changed such domicile to the province of Ontario?

4. In what manner should the capital fund be dealt with by the trustees according to the determination of the foregoing questions respectively?

The settlement was dated the 17th October, 1863, and by it Thomas Ross, then of the city of Quebec, assigned to a trustee and his assigns, now represented by the applicants, two policies of assurance, upon certain trusts, including a trust, on the death of Ellen Eliza Creighton (his intended wife) not leaving any child or children issue of the marriage, or upon the death of such children in minority, to pay over the proceeds of the policies "to Ann Jane Ross, the present daughter of him, the said Thomas Ross, or to such persons as he, the said Thomas Ross, shall by his last will and testament in that event appoint and direct."

The settlement was executed in Upper Canada, but in it the parties declared that their domicile "for all purposes and effects of their said marriage shall be held Lower Canada, whether they reside there or elsewhere." Thomas Ross was described as "of the city of Quebec, but at present being in the city of Toronto." His domicile at the date of the marriage was in fact in Lower Canada; but after the marriage he and his wife resided in Ontario, and had there for many years their actual domicile. He died at Ottawa on the 10th August, 1901, leaving him surviving his widow (formerly Ellen Eliza Creighton), his daughter (Ann Jane Clayton), and her daughter (Maud Honor Clayton, now Mrs. Grey.) His widow died at Ottawa in 1910, leaving no issue.

By his will, probate of which was duly granted by the Surrogate Court of Carleton, Thomas Ross did not expressly exercise the power of appointment reserved in the settlement; but he did deal with the whole of his real and personal estate, devising and bequeathing it to his executors in trust for the sole and separate use of his wife during her life, and directing that upon her death they are to stand seized of \$3,000 in trust to pay the income thereof to his granddaughter (Mrs. Grey), and to hold the residue in trust to pay the income to his daughter (Mrs. Clayton) during her life and thereafter to Mrs. Grey; and after Mrs. Grey's death, the estate to pass to her children.

By sec. 29 of the Wills Act, R. S. O. 1897 ch. 128, a general devise or bequest of property which a testator has power to appoint in any manner he thinks proper "shall operate as an execution of such power, unless a contrary intention appears by the will."